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12 J.C. PENNEY CORPORATION, INC.

13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 L.A. PRINTEX INDUSTRIES, INC., a
16 California Corporation,

17 Plaintiff,

18 v.

19 FABRITEX, INC.,
20 a California Corporation;
21 UNGER FABRIK, LLC,
22 a California Limited Liability Co.;
23 J.C. PENNEY CORPORATION, INC.,
24 a Delaware Corporation; DOES 1-10,

25 Defendants.

26 **Case No. CV 08-06234 JFW (SHx)**

27 **ORDER
REGARDING STIPULATED
PROTECTIVE ORDER**

28 To expedite the flow of discovery material, facilitate the prompt resolution of
disputes over confidentiality, protect adequately material entitled to be kept
confidential, and ensure that protection is afforded only to material so entitled, it is,
pursuant to the Court's authority under Rule 26(c) of the Federal Rules of Civil
Procedure and with the consent of the parties, ORDERED:

1 **1. Non-disclosure of Stamped Confidential Documents.** Except with
 2 the prior written consent of the party or other person originally designating a
 3 document to be stamped as a confidential document, or as hereinafter provided
 4 under this order, no Stamped Confidential Document as the term is defined below,
 5 may be disclosed to any person.

6 **2. Stamped Confidential Document.** Any information, document, or
 7 thing produced by any party, third party, or non-party (the “Producing Entity”) in
 8 connection with this litigation that is reasonably and in good faith believed by
 9 counsel for any Producing Entity to contain trade secrets,¹ including but not limited
 10 to information regarding: sales figures, distributors, manufacturers, purchasers,
 11 marketing, advertising, or other commercial information subject to protection under
 12 Rule 26(c)(7) of the Federal Rules of Civil Procedure may be designated as
 13 “CONFIDENTIAL.” A “Stamped Confidential Document” shall mean any
 14 document which bears the legend (or which shall otherwise have the legend
 15 recorded upon it in a way that brings its attention to a reasonable examiner)
 16 “CONFIDENTIAL” to signify that it contains information believed to be subject to
 17 protection under Fed. R. Civ. P. 26(c)(7). The designation of Stamped Confidential
 18 Documents shall be made in good faith, upon a reasonable belief that such
 19 designation is appropriate. For purposes of this Order, the term “document” shall
 20 mean all written, recorded, or graphic material, whether produced or created by a
 21 party or another person, whether produced pursuant to Fed. R. Civ. P. 34, subpoena,
 22 by agreement or otherwise. Interrogatory answers, responses to requests for
 23 admission, deposition transcripts and exhibits, pleadings, motions, affidavits, and
 24 briefs that quote, summarize or contain material entitled to protection, may be

25 ¹ A “trade secret” is “information, including a formula, pattern, compilation,
 26 program, device, method, technique, or process, that: (1) Derives independent
 27 economic value, actual or potential, from not being generally known to the public
 28 or to other persons who can obtain economic value from its disclosure or use; and
 BN 3933084v1 (2) Is the subject of efforts that are reasonable under the circumstances to maintain
 its secrecy.” CAL. CIVIL CODE § 3426.1.

1 accorded status as a Stamped Confidential Document, but, to the extent feasible,
 2 shall be prepared in such a manner that the confidential information is bound
 3 separately from that entitled to protection.

4 **3. Permissible Disclosures.** Notwithstanding paragraph 1 above,
 5 Stamped Confidential Documents may be disclosed to the parties in this action,
 6 counsel for the parties in this action; to the partners, associates, staff attorneys,
 7 paralegals, secretaries, paralegal assistants and employees of such attorneys; to
 8 translators; to persons with prior knowledge of the Stamped Confidential
 9 Documents or the confidential information contained therein and their agents; and
 10 to the Court officials involved in this litigation (including court reporters, persons
 11 operating video recording equipment at depositions, and any special master
 12 appointed by the Court). Such documents may also be disclosed:

13 (a) to any person designated by the parties as experts or to outside
 14 consultants or experts retained for the purpose of assisting counsel in the litigation
 15 and; and

16 (b) to persons noticed for depositions or designated as trial
 17 witnesses to the extent reasonably necessary in preparing to testify;

18 (c) provided, however, that each person in categories identified in
 19 subparagraphs (a) and (b) above to whom disclosure of Stamped Confidential
 20 Documents is to be made shall, in a written instrument (in the form of the
 21 Declaration attached as Exhibit A to this Order) executed prior to any disclosure,
 22 acknowledge that such person has read and understands that terms of this Order and
 23 agrees to comply with, and be bound by, this Order until modified by further Order
 24 of this Court or by agreement of the parties hereto. Counsel for each party shall
 25 maintain copies of executed recitals with respect to all persons described in
 26 subparagraphs (a) and (b) to whom counsel has disclosed or exhibited any Stamped
 27 Confidential Documents.

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1 4. **Motion to Disclose.** In the event that a party desires to provide access
 2 to Stamped Confidential Documents hereunder to any person or category of persons
 3 not included in paragraph 3 hereof, that party shall move this Court for an order that
 4 such person or category of persons may be given access to such documents. The
 5 party asserting confidentiality shall have the burden of establishing the
 6 confidentiality of any documents challenged in a motion to disclose. In the event
 7 that the motion is granted, such person or category of persons may have access to
 8 such documents on whatever conditions or terms the Court shall require.

9 5. **Declassification.** The parties agree to work together in good faith to
 10 resolve disputes over whether particular documents constitute Stamped
 11 Confidential Documents. Should the parties fail to agree, a party (or aggrieved
 12 entity permitted by the Court to intervene for such purpose) may move this Court
 13 for an order that Stamped Confidential Documents are, in fact, not within the scope
 14 of protection afforded by Rule 26(c) of the Federal Rules of Civil Procedure; or that
 15 materials voluntarily disclosed by a party in these proceedings should not be subject
 16 to the protections of this Order. In addition to service on the opposing party, a copy
 17 of any such motion shall be served on any non-party who is the Producing Entity
 18 with respect to the materials at issue and such non-party Producing Entity shall
 19 have standing to oppose such motion before the Court. The party asserting
 20 confidentiality shall have the burden of establishing the confidentiality of any
 21 document that is the subject of a motion to declassify. Until declassified by the
 22 Court, all Stamped Confidential Documents shall remain subject to the terms of this
 23 Protective Order.

24 6. **Timing for Designation.** The Producing Entity may identify and
 25 mark Stamped Confidential Documents when answers to interrogatories, request for
 26 admissions or request for the production of documents are served; when affidavits,
 27 pleadings or memoranda are served; when copies of documents are provided; or at
 28 the time of the inspection of premises or things. The parties agree not to disclose
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1 any Stamped Confidential Documents pursuant to the terms of this Stipulation prior
2 to and regardless of entry of an order thereon.

3 **7. Inadvertent Failure to Effect Designation.** Inadvertent failure by a
4 Producing Entity to designate Stamped Confidential Documents as such prior to
5 their disclosure or production will not prevent a subsequent designation by letter to
6 the receiving party promptly sent after discovery of such inadvertent failure,
7 provided that any disclosure of such documents made by the receiving party prior to
8 any subsequent designation of material as Stamped Confidential Documents shall
9 not be a violation of this Order.

10 **8. Confidential Information in Depositions.**

11 (a) A deponent may during the deposition be shown, and examined
12 about, Stamped Confidential Documents if the deponent already knows the
13 confidential information contained therein or if the provisions of paragraph 3 are
14 complied with. In instances where the provisions of paragraph 3 have not been
15 complied with, the party seeking to show and examine a deponent about a
16 document designated as "Confidential" shall have the burden of establishing said
17 deponent's prior knowledge of confidential information contained in the documents
18 before showing or examining deponent about said documents or the confidential
19 information contained therein. A deponent who is not a party or a representative of
20 a party shall be furnished with a copy of this Order before being examined about, or
21 asked to produce, potentially confidential documents, and shall acknowledge
22 compliance with this Order by executing the recital in the form attached as Exhibit
23 A hereto.

24 (b) A party or nonparty deponent may designate testimony or
25 exhibits as Stamped Confidential Documents, in accordance with the terms of
26 paragraph 2 during a deposition by so stating on the record either at the
27 commencement of the proceeding or at any time during the proceeding, in which
28 event all persons who are not entitled to be privy to the confidential information

1 contained in such documents shall be excluded from those portions of the
 2 proceeding at which such information is disclosed. In the event that testimony or
 3 exhibits are designated Stamped Confidential Documents during a proceeding, the
 4 Court Reporter shall transcribe separately and bind separately those portions of the
 5 testimony and/or exhibits designated as Stamped Confidential Documents and shall
 6 mark the face of the separately bound transcript containing such confidential
 7 testimony and/or exhibits "Confidential Pursuant to Court Order."

8 (c) In addition, parties and nonparty deponents may, within 30
 9 (thirty) days after receiving a deposition transcript, designate pages of the transcript
 10 (and exhibits thereto) as Stamped Confidential Documents in accordance with
 11 paragraph 2 hereof. Such pages within the deposition transcript (or exhibits
 12 thereto) may be designated by marking such pages as indicated in paragraph 2
 13 above. If no party or deponent timely designates confidential information in a
 14 deposition, then none of the transcript or its exhibits will be treated as confidential.
 15 If a timely designation is made, the designated portions and exhibits shall be filed
 16 under seal separately from the portions and exhibits not so designated.

17 **9. Confidential Information at Trial.** This Stipulation and Protective
 18 Order only governs pre-trial matter in this action. Confidentiality concerns at trial
 19 will be separately addressed to the Court at that time as appropriate.

20 **10. Subpoena by Other Courts or Agencies.** If another court or an
 21 administrative agency subpoenas or orders production of Stamped Confidential
 22 Documents which a party has obtained in this action under the terms of this Order,
 23 such party shall promptly notify the Producing Entity or other person who
 24 designated the documents as such of the pendency of such subpoena or order. If the
 25 designating party elects to resist production of the materials, it shall promptly so
 26 notify the subpoenaed party and the latter shall cooperate in affording the
 27 designating party the opportunity to oppose or limit production of the materials;
 28 provided that the designating party shall bear all expenses, including but not limited

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1 to attorneys' fees and any costs incurred by the subpoenaed party in connection
 2 therewith.

3 **11. Filing.** Stamped Confidential Documents need not be filed with the
 4 Clerk except when deemed in good faith by counsel to be required in connection
 5 with motions under Fed. R. Civ. P. 12 or 56 or other matters, including discovery-
 6 related matters, pending before the Court. If necessary, the filing party shall lodge
 7 the Stamped Confidential Documents with the Court along with an *ex parte*
 8 application to file them under seal, pursuant to Local Rule 79-5.1. If filed under
 9 seal, they shall remain sealed while in the office of the Clerk so long as they retain
 10 their status as Stamped Confidential Documents and/or until further order of the
 11 Court. Where possible, only confidential portions of filings with the Court shall be
 12 filed under seal. All papers or other filings with the Court that refer to confidential
 13 information shall designate the particular aspects that are confidential in order to
 14 assist the Court from inadvertently disclosing confidential information.

15 **12. Client Consultation.** Nothing in this Order shall prevent or otherwise
 16 restrict counsel from rendering advice to their clients and relying generally on
 17 examination of Stamped Confidential Documents.

18 **13. Use.** Persons obtaining access to Stamped Confidential Documents
 19 under this Order shall use the information only for preparation and trial of this
 20 litigation (including appeals and retrials), and shall not use such information for any
 21 other purpose, including business, governmental, commercial, administrative or
 22 judicial proceedings.

23 **14. Non-Termination.** The provisions of this Order shall not terminate at
 24 the conclusion of this action and shall remain in full force and effect after the
 25 conclusion of this action to provide the Court with jurisdiction to enforce its terms.
 26 Within a hundred twenty (120) days after final conclusion of all aspects of this
 27 litigation, Stamped Confidential Documents and all copies of same (other than
 28 exhibits of record) shall be returned to the party or person that produced such

1 documents or, at the option of the producer (if it retains at least one copy of the
 2 same), destroyed. All counsel of record shall make certification of compliance
 3 herewith, and shall deliver the same to counsel for the party who produced the
 4 documents not more than one hundred fifty (150) days after final termination of this
 5 litigation. Notwithstanding this provision, counsel are entitled to retain an archival
 6 copy of all pleadings, discovery, motion papers, transcripts, legal memoranda,
 7 correspondence, and attorney and consultant work product, even if such materials
 8 contain Stamped Confidential Documents. Any such archival copies that contain or
 9 constitute Stamped Confidential Documents remain subject to this Protective Order
 10 and shall be maintained in a safe and secure manner.

11 **15. Modification and No Waiver.** Nothing in this Order shall prevent
 12 any party or other person from seeking modification of this Order (either by motion
 13 or agreement of the parties hereto, subject to Court approval), from objecting or
 14 seeking further limitations on discovery that it believes to be otherwise improper, or
 15 from seeking further or different orders from the Court. In addition, by stipulating
 16 to the entry of this Protective Order, no Party waives any right it otherwise would
 17 have to object to disclosing or producing any information or item on any ground not
 18 addressed in this Protective Order. Similarly, no Party waives any right to object
 19 on any ground to use in evidence any of the material covered by this Protective
 20 Order

21 **16. Voluntary Dissemination and Waiver.** Nothing contained herein
 22 shall preclude a Producing Entity from (a) using or disseminating its own
 23 confidential information in any way; (b) disclosing information taken from a
 24 Stamped Confidential Document to any person who on the face of that document is
 25 shown as having previously received the document; (c) disclosing information
 26 which, at the time of disclosure, was already in the recipient's possession or
 27 available to it from any other source having no obligation to the Producing Entity
 28 which is the source of said information or which is, or at any time hereafter

1 becomes, available to the public or which, after access is gained through disclosure
2 in this action, is at any time obtained by the recipient from any other person, firm or
3 company having no obligation to or relationship with the source of said
4 information; or (d) waiving any provision in this Order with respect to any Stamped
5 Confidential Document designated by it without further order of the Court.

6 **17. Responsibility of Attorneys.** The attorneys of record are responsible
7 for employing reasonable measures to control, consistent with this order,
8 duplication of, access to, and distribution of copies of Stamped Confidential
9 Documents. Parties shall not duplicate any Stamped Confidential Documents
10 except working copies and for filing with the Court under seal.

11 18. The parties recognize that, during the course of this action, there may
12 be produced Stamped Confidential Documents originating from a non-party to
13 which there exists an obligation of confidentiality. Documents originating with a
14 non-party that a Producing Entity reasonably and in good faith believes are subject
15 to a confidentiality obligation may, where otherwise appropriate, be designated
16 Stamped Confidential Documents and shall be subject to the restrictions on
17 disclosure specified in this order.

SO ORDERED.

20 || Dated: 7/24/2009

By: /s/STEPHEN J. HILLMAN
Magistrate Judge of the U.S. District Court

1 EXHIBIT A
2
3

AGREEMENT TO BE BOUND BY CONFIDENTIALITY ORDER

4 1. I, _____, have read the foregoing Stipulation and Order
5 of Confidentiality entered in the action entitled *L.A. Printex Industries, Inc. v.*
6 *Fabritex, Inc.*, CV-08-06234 JFW (SHx) on _____ [Date] _____, and
7 agree to be bound by its terms with respect to any information, documents or
8 materials designated by the parties and/or nonparties as “Confidential” that are
9 furnished to me as set forth in the Order.

10 2. I further agree not to disclose to anyone and not to make any copies of
11 information, documents or materials designated by the parties and/or nonparties as
12 “Confidential” furnished to me except in accordance with the Order.

13 3. I hereby consent to the jurisdiction of the United States District Court
14 for the Central District of California with respect to any proceedings to enforce the
15 terms of the Order and the punishment of violations thereof.

16
17 Dated: _____
18 By: _____
19 _____

20 [Signature]
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